

§ 58-10-565. Application requirements.

(a) An SPFC, when permitted by its organizational documents, may apply to the Commissioner for a certificate of authority to transact insurance or reinsurance business as authorized by this Part. An SPFC shall only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this Part, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the Commissioner.

(b) To transact business in this State, an SPFC shall:

- (1) Comply with the procedures established in G.S. 58-10-345(c).
- (2) Obtain from the Commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this State.
- (3) Hold at least one management meeting each year in this State. For the purposes of this section, management is defined as the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.
- (4) Maintain its principal place of business in this State.
- (5) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this State. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the Commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served.
- (6) Provide such documentation of the insurance securitization as requested by the Commissioner immediately upon closing of the transaction, including:
 - a. An opinion of a duly licensed North Carolina legal counsel with respect to compliance with this Part and any other applicable laws as of the effective date of the transaction.
 - b. A statement under oath of its president and secretary demonstrating its financial condition.
- (7) Provide a complete set of the documentation of the insurance securitization to the Commissioner immediately following closing of the transaction.

(c) A complete SPFC application shall include the following:

- (1) A certified copy of the SPFC's organizational documents.
- (2) Evidence of:
 - a. The amount and liquidity of its assets relative to the risks to be assumed.
 - b. The adequacy of the expertise, experience, and character of the person or persons who manage the SPFC.
 - c. The overall soundness of the SPFC's plan of operation.
 - d. Other factors considered relevant by the Commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.
 - e. The applicant SPFC's financial condition, including the source and form of the minimum capital to be contributed to the SPFC.
- (3) A plan of operation consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include:
 - a. Draft documentation or, at the discretion of the Commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before the effectuation of the SPFC

contract, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization.

- b. The source and form of additional capital to be contributed to the SPFC.
 - c. The proposed investment strategy of the SPFC.
 - d. A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled.
 - e. A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.
- (4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors, providing the officers' and directors' legal names, any names under which they have or are conducting their affairs, and any other biographical information as the Commissioner may request.
- (5) An affidavit from the applicant SPFC verifying:
- a. The applicant SPFC complies with this Part.
 - b. The applicant SPFC operates only pursuant to this Part.
 - c. The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction.
 - d. The securities proposed to be issued, if any, are valid legal obligations that are either properly registered or constitute an exempt security or form part of an exempt transaction.
- (6) Any other statements or documents required by the Commissioner to evaluate and complete the licensing of the SPFC.

(d) In addition to the information required by subsection (c) of this section and by G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the Commissioner:

- (1) A business plan demonstrating how the applicant SPFC accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner and how the applicant will report the experience to the Commissioner.
- (2) A statement acknowledging that all records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or audit by the Commissioner.
- (3) All contracts or sample contracts between the SPFC and any counterparty related to each protected cell.
- (4) A description of the expenses allocated to each protected cell.

(e) Information submitted pursuant to this section shall be and remain confidential, and shall not be made public by the Commissioner or the Commissioner's designee unless disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:

- (1) Such public official shall agree in writing to maintain the confidentiality of such information.
 - (2) The laws of the state in which such public official serves require such information to be and to remain confidential.
- (f) G.S. 58-10-430 applies to SPFCs.
- (g) SPFCs are subject to any rules or regulations promulgated pursuant to G.S. 58-10-460.
- (h) The Commissioner may retain legal, financial, and audit services from outside the Department to audit and investigate the application, the cost of which may be charged against the applicant. The Commissioner also may use internal resources to audit and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar work subject to a minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is payable upon filing of the application and the remainder upon licensure.
- (i) An SPFC shall be subject to payment of premium taxes as required by G.S. 58-10-455.
- (j) The Commissioner shall grant a certificate of authority authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this State, upon a finding by the Commissioner that:
 - (1) The SPFC's proposed plan of operation provides a reasonable and expected successful operation.
 - (2) The terms of the SPFC contract and related transactions comply with this Part.
 - (3) The proposed plan of operation is not hazardous to any counterparty.
 - (4) To the extent required by law or regulation, the Commissioner or an equivalent regulatory authority of the state of domicile of each counterparty has notified the Commissioner in writing or otherwise provided assurance satisfactory to the Commissioner that it has approved or not disapproved the transaction.
 - (5) The certificate of authority authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is authorized to conduct pursuant to this Part.
- (k) In evaluating the expectation of a successful operation, factors the Commissioner shall consider include whether the proposed SPFC and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.
- (l) To minimize the likelihood that the proposed plan of operation is hazardous to any counterparty, the Commissioner may require reasonable safeguards in the SPFC's plan of operation where applicable and appropriate in the circumstance, including, without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an SPFC contract.
- (m) A foreign or alien corporation or limited liability company, upon approval of the Commissioner, may become a domestic SPFC after complying with G.S. 58-10-345(c)(1). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this State and is subject to the authority and jurisdiction of this State. In connection with this redomestication, the Commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company

redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section. (2013-116, s. 1; 2014-65, s. 18; 2015-99, s. 1; 2016-78, s. 4.1(x).)